

REMARKS

Posture of the Case

Claims 1-29 were originally filed. A non-final Office action of March 14, 2007 rejected all claims under 35 U.S.C. 103(a), as well as objecting to the drawings and specification. In order to overcome the rejections and objections, Applicant responsively amended the claims, the specification, and FIG. 1 of the drawings in Reply A filed July 15, 2007. In a Preliminary Amendment of August 7, 2007, Applicant further amended claims 30, 31, and 40.

A final Office action indicated that the amendments to the drawings and specification made in Reply A were acceptable and that the Examiner had withdrawn prior objections to the drawings and specification.

In the final Office Action, claim 30 was objected to because of an informality and also rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. Claims 30, 31, 40, 5, 34, 43, 6, 35, 44, 7, 36, 45, 9, 38, and 47 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 3-5, 9, 30-34, 38, 40-43 and 47 were rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,763,466 (“Glover”) in view of US Patent 6,721,721 (“Bates”). Claims 6-8, 10, 35-37, 39, 44-46 and 48 were rejected under 35 U.S.C. 103(a) as being unpatentable over Glover in view of Bates and further in view of US Patent 7,143,113 (“Radatti”).

Applicant responsively filed a Request for Continued Examination and therein canceled claims 3-10 and 30-48, and submitted new claims 49, 53 and 57 to overcome the rejections.

Present Office Action and Applicant's Action Herein

Claim 49 stands objected to on grounds it is unclear whether the limitations following the term “operative” in line 4 are part of the claimed invention. Examiner suggests that the term should be amended to “configured” or the like.

Applicant thanks Examiner for his analysis and herein presents an amendment according to the suggestion.

Claims 57-60 stand rejected under 35 U.S.C. 101 on grounds the claimed invention is directed to non statutory subject matter. Specifically, the Office action states that due to wording

of claim 57, the “computer program product” appears to merely comprise “instructions for execution,” so that claims 57-60 are, therefore, drawn to software per se. The Office action contends software by itself does not fall within any of the four statutory categories of invention on grounds that software is not i) a physical article or object (and, therefore, not a machine or manufacture), nor ii) a combination of substances (and, therefore, not a compilation of matter).

Applicant appreciates Examiner’s explanation and herein presents an amendment to claim 57 to recite “A computer program product including a tangible computer readable medium, said computer readable medium having instructions stored thereon for execution by a computer system.” This amended claim language more particularly points out that the claimed computer program product is a physical article or object.

Claims 49-60 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,763,466 (Glover) in view of US Patent Application 200310046611 (Muttik).

Applicant submits that the combination of Glover and Muttik do not teach or suggest all the elements, steps or limitations of claims 49-60. However, merely in order to expedite allowance of the present application, Applicant herein presents amendments to claims 49, 53 and 57 to even more particularly point out how the present invention differs from the teachings of Glover and Muttik. Applicant consequently submits that claims 49-60 now all the more certainly recite features that are patentably distinct with regard to the combination of Glover and Muttik and further with regard to all the art of record.

Applicant’s Arguments

In particular, claims 49, 53 and 57 are each herein amended to recite “determining a scanning interval from a time of the first scanning instance until a time of the second scanning instance” and “the scanning of the higher priority resources in the next instance includes scanning i) resources determined to be virus free in both the first scanning instance and the second scanning instance but not having equal hash values in the first and second update times, ii) resources determined to be virus free in both the first scanning instance and the second scanning instance but wherein the scanning interval is less than a predetermined threshold, iii) resources determined to be virus free in the first scanning instance and having equal hash values in the first and second update times but wherein the scanning interval is less than a

predetermined threshold, and iv) resources determined to be virus free in the second scanning instance but wherein the scanning interval is less than a predetermined threshold.”

The Office action, on page 4, cites Glover, column 6, lines 17-52, and asserts that this passage specifically teaches a resource having a change in AV state information is classified as a high priority; a resource having no such change is classified as a low priority; current AV state information is compared to see if it differs from stored AV state information; and if there is a change, re-scan the resource and update AV state information, but if there is no change, don’t re-scan. The Office action further asserts this teaching in the passage meets the claim feature “classifying each of the resources as higher or lower priority responsive to whether the hash values for each resource are equal for the first and second update times and whether the scanning determines each resources is virus free in both the first and second scanning instances” and “for next scanning instance the resources classified as higher priority are scanned before the ones of the resources classified as lower priority.”

Applicant notes that “no change in AV state information” could mean a situation wherein a resource has been virus scanned and found virus free in a first instance and then the resource is found to be unchanged in a second instance (i.e., where there has been no virus definition change between the two instances and the hashes in the two instances show that the resources are the same). Or “no change in AV state information” could mean a situation wherein a resource has been virus scanned and found virus free in first and second instances.

Regardless of which meaning is taught by Glover or that the Office action infers from Glover, the amended claims 49, 53 and 57 now make it particularly clear that the scanning of resources *does* occur in a situation where a resource has been virus scanned and found virus free in a first instance and then the resource’s hash is found to be the same in both the first instance and a second instance. That is, the amended claims recite “... iii) resources determined to be virus free in the first scanning instance and having equal hash values in the first and second update times but wherein the scanning interval is less than the predetermined threshold iv) resources determined to be virus free in the second scanning instance and having equal hash values in the first and second update times but wherein the scanning interval is less than a predetermined threshold.”

And the amended claims now also make it particularly clear that the scanning of resources *does* occur in a situation where a resource has been virus scanned and found virus free in first and second instances. That is, the amended claims recite “determining a scanning interval from a time of the first scanning instance until a time of the second scanning instance” and “the scanning of the higher priority resources in the next instance includes scanning i) resources determined to be virus free in both the first scanning instance and the second scanning instance but not having equal hash values in the first and second update times, ii) resources determined to be virus free in both the first scanning instance and the second scanning instance but wherein the scanning interval is less than a predetermined threshold . . . , and iv) . . . ”

Applicant submits that neither Glover, nor Glover in combination with Muttik or any of the other art previously cited teaches what is now recited in claims 49, 53 and 57, as discussed herein above. Further, Applicant submits that claims 50 and 52, 54 and 56, and 58 and 60 are allowable at least because they depend upon respective allowable independent claims 49, 53 and 57.

REQUESTED ACTION

Applicant submits that for at least the reasons set out herein above the invention as claimed in accordance with amendments submitted herein is patentably distinct, and hereby requests that Examiner grant allowance and prompt passage of the application to issuance.

Respectfully submitted,



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